

## CHAPTER 7. MANUFACTURING NFA FIREARMS

### Section 7.1 Qualifying to manufacture NFA firearms

**7.1.1 Licensing under the GCA.** Persons intending to engage in the business of manufacturing NFA firearms that also meet the definition of “firearm” in the GCA must first apply for and obtain a GCA manufacturer’s license.<sup>98</sup> The license application is ATF Form 7 (5310.12).<sup>99</sup> Appendix C contains a copy of the form. Licenses are issued for a period of 3 years. See Section 5.1 for a discussion of the license fees, licensing standards, and other provisions of the GCA relating to licensing.

**7.1.1.1 Engaging in business at multiple locations.** A separate license must be obtained for each location where business will be conducted.<sup>100</sup>

**7.1.1.2 Engaging in business as both an importer and a manufacturer.** Persons intending to engage in business as firearms importers and manufacturers, even if the business will be conducted from the same premises, must have both an importer’s license and a manufacturer’s license.<sup>101</sup>

**7.1.1.3 Do importers and manufacturers need a dealer’s license to deal in the firearms they import or manufacture?** Licensed importers and manufacturers are not required to have a separate dealer’s license to deal in firearms they import or manufacture.<sup>102</sup> A license as an importer or manufacturer authorizes the FFL to deal in the types of firearms authorized by the license to be imported or manufactured.

**7.1.1.4 Manufacturers of destructive devices.** Manufacturers are reminded that if the firearms they manufacture include destructive devices, or if they solely manufacture destructive devices, they must apply for and obtain a license as a manufacturer of destructive devices. They should also note that the fee for such license is generally \$1,000 per year, rather than \$50 per year for a license to manufacture firearms other than destructive devices. A license is issued for a period of 3 years. Qualifying to manufacture destructive devices also entitles the FFL to manufacture and deal in firearms other than destructive devices.<sup>103</sup>

### 7.1.2 Payment of special (occupational) tax to do business in NFA firearms.

Every person who engages in the business of manufacturing NFA firearms must pay a special tax.<sup>104</sup> The tax must be paid on or before the date of commencing the taxable business and every year thereafter on or before July 1. The tax is paid by filing ATF Form 5630.7, Special Tax Registration and Return, together with a check or money order for the amount of the tax.<sup>105</sup> Appendix C contains a copy of the form. The special tax must be paid for each premises where business will be conducted.<sup>106</sup> See Section 5.2 for a more thorough discussion of NFA’s requirements relating to the special tax.

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<sup>98</sup> 18 U.S.C. 923(a)

<sup>99</sup> 27 CFR 478.44(a)

<sup>100</sup> 27 CFR 478.50

<sup>101</sup> 27 CFR 478.41(b)

<sup>102</sup> *ibid*

<sup>103</sup> *ibid*

<sup>104</sup> 26 U.S.C 5801

<sup>105</sup> 27 CFR 479.34(a)

<sup>106</sup> 27 CFR 479.31(b)

**7.1.3 Registration by firearms manufacturers with the U.S. Department of State.** The State Department has the responsibility of enforcing the provisions of the Arms Export Control Act (AECA) relating to the export of firearms and other defense articles on the U.S. Munitions List. Nevertheless, any person engaged in the U.S. in the business of manufacturing or exporting firearms or other defense articles is required to register with the State Department’s Office of Defense Trade Controls (ODTC).<sup>107</sup> The regulations expressly state that “Manufacturers who do not engage in exporting must nevertheless register.” Form DSP-9 (Registration Statement) and a transmittal letter must be submitted to ODTC by the registrant with a check or money order payable to the State Department of one of the fees prescribed by State Department regulations.<sup>108</sup> Appendix C contains a copy of Form DSP-9. See Section 5.3 for a more detailed discussion of the registration requirement.

**7.1.3.1 Registration exemption for fabricating articles for “research and development.”** State Department regulations in 22 CFR 122.1(b)(4) exempt from the registration requirement persons who fabricate articles for experimental or scientific purpose, including research and development. The regulations do not define “experimental or scientific purpose” or “research and development.” Consequently, manufacturers who believe they may be entitled to the exemption should contact ODTC to determine if they are entitled to the exemption.

## **Section 7.2 What is a “manufacturer”?; What is “manufacturing”?**

**7.2.1 “Manufacturer”.** As defined by the GCA, a “manufacturer” is any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution.<sup>109</sup> Similarly, NFA defines the term to mean any person “who is engaged in the business of manufacturing firearms”, that is, firearms subject to the NFA.<sup>110</sup> To determine who is a “manufacturer” of firearms, we must look to see whether the person manufactures firearms as discussed in Section 7.2.2.

**7.2.2 “Manufacturing”.** “Manufacturing” is not defined by the law, regulations, or any formal ATF ruling. Nevertheless, the term has been interpreted by ATF to cover activities other than producing a firearm from scratch. As interpreted by ATF, the term covers virtually any work performed on a firearm during the process of preparing the firearm for subsequent sale. For example, a person having a contract with a manufacturer to apply finishing or other work on firearms, or firearms frames or receivers, to prepare them for subsequent sale by the manufacturer would be a “manufacturer” required to qualify as such. Of course, if the person produced firearms parts other than frames or receivers for the manufacturer or performed work on firearms parts not defined as “firearms,” the person would not be a “manufacturer.”

**7.2.3 What is the difference between manufacturing and gunsmithing?** Performing the work of a gunsmith requires a dealer’s license under the GCA, not a manufacturer’s license.<sup>111</sup> Nevertheless, a license as an importer or manufacturer also entitles the licensee to conduct business as a gunsmith. The term “dealer” under the GCA includes a gunsmith, that is, “any person engaged in the business of repairing firearms or fitting special barrels, stocks, or trigger mechanisms to firearms.” However, gunsmiths occasionally perform the work of a manufacturer and do so without the required

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<sup>107</sup> 22 CFR 122.1

<sup>108</sup> 22 CFR 122.2(a)

<sup>109</sup> 18 U.S.C 921(a)(10)

<sup>110</sup> 26 U.S.C. 5845(m)

<sup>111</sup> 18 U.S.C. 921(a)(11)(B)

manufacturer's license. Indeed, there is no distinction between the activities of a gunsmith and a manufacturer in terms of the physical things done to a firearm. What distinguishes gunsmithing from manufacturing is the purpose for which the work is done. If a gunsmith performs work on a customer's personal gun for the customer's personal use, the function is lawfully performed pursuant to the gunsmith's license as a dealer under the GCA. However, if the gunsmith performs work on guns as a step in the process of preparing them for subsequent sale, the work is "manufacturing" requiring a manufacturer's license and, if the firearm is an NFA firearm, a special tax stamp under the NFA. Here are some examples:

(1) John Doe has a personal firearm and takes it to a gunsmith, a licensed dealer, for modification. The work performed in this instance is the legitimate work of a gunsmith and may be performed pursuant to the gunsmith's dealer's license. The gunsmith need not be licensed as a manufacturer, or hold a special tax stamp in the case of an NFA firearm, to perform the work.

(2) Company A is a licensed manufacturer, but contracts with other licensees to perform finishing work on NFA firearms it manufactures. One such contractor is a gunsmith, a licensed dealer. After receiving the finished firearms, Company A offers the firearms for sale. In this instance, the gunsmith, as well as Company A, is engaged in business as an NFA firearms manufacturer and needs a manufacturer's license and special tax stamp to do so.

**7.2.4 Do you know how ATF would classify your product?** There is no requirement in the law or regulations for a manufacturer to seek an ATF classification of its product prior to manufacture. Nevertheless, a firearms manufacturer is well advised to seek an ATF classification before going to the trouble and expense of producing it. Perhaps the manufacturer intends to produce a GCA firearm but not an NFA firearm. Submitting a prototype of the item to ATF's Firearms Technology Branch (FTB) for classification in advance of manufacture is a good business practice to avoid an unintended classification and violations of the law.

**7.2.4.1 ATF classification letters.** ATF letter rulings classifying firearms may generally be relied upon by their recipients as the agency's official position concerning the status of the firearms under Federal firearms laws. Nevertheless, classifications are subject to change if later determined to be erroneous or impacted by subsequent changes in the law or regulations. To make sure their classifications are current, FFLs/SOTs should stay informed by periodically checking the information published on ATF's website, particularly amendments to the law or regulations, published ATF rulings, and "open letters" to industry members.

**Section 7.3 Registering the manufacture of NFA firearms.** A manufacturer qualified to engage in business under the GCA and NFA may make NFA firearms without payment of the making tax.<sup>112</sup> However, the manufacturer must report and register each firearm made by filing with the NFA Branch an accurate notice of the manufacture on ATF Form 2, Notice of Firearms Manufactured or Imported, executed under the penalties of perjury.<sup>113</sup> Appendix C contains a copy of Form 2. The NFA Branch's receipt of the form effectuates the registration of the firearms listed on the form.<sup>114</sup> See Section 7.4.6 on the manufacture of silencer parts.

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<sup>112</sup> 27 CFR 479.68

<sup>113</sup> 27 CFR 479.103

<sup>114</sup> *ibid*

**7.3.1 Preparation of ATF Forms 2.** The form and its contents are prescribed by ATF regulation.<sup>115</sup> The regulation states that the form must set forth the name and address of the manufacturer, identify the manufacturer's special tax stamp and license, and show the date of manufacture, the type, model, length of barrel, overall length, caliber, gauge or size, serial numbers and other marks of identification, and place where the firearms are kept.

**7.3.2 Filing ATF Forms 2.** All firearms manufactured during a single day must be included on one Form 2 and must be filed by the manufacturer no later than the close of the next business day. The manufacturer must prepare the form in duplicate, file the original with the NFA Branch, and keep the copy with the records required to be kept.

**7.3.2.1 Existing firearms modified into NFA firearms or reactivated.** If an existing firearm is modified into an NFA firearm or reactivated, the existing serial number of the firearm must be entered into Block 8g on Form 2 and the name and address of the original manufacturer or importer must be entered into Block 8b. It is unlawful for any person knowingly to transport, ship, or receive in interstate or foreign commerce any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered, or to receive or possess any such firearm that has at any time been shipped or transported in interstate or foreign commerce.<sup>116</sup>

**7.3.3 Reactivation of a registered unserviceable NFA firearm.** Although unserviceable NFA firearms are "firearms" required to be registered under the NFA, the reactivation of such firearm is considered to be the making or manufacture of an NFA firearm. Consequently, a qualified NFA manufacturer who reactivates an unserviceable firearm must file a Form 2 with ATF showing the reactivation.<sup>117</sup> The existing serial number on the unserviceable firearm should be used.

**7.3.3.1 Incorrect description of firearm.** If the original registration document for the unserviceable firearm contains incorrect descriptive information for the weapon, a letter should be written to the NFA Branch providing the proper description and/or indicating what portions of the description need to be changed. The letter should contain photographs of the actual markings on the firearm. If a correction of the recorded serial number is needed, a photograph or pencil rubbing of the serial number is required. ATF will provide a response indicating that the NFRTR has been amended to reflect the correct information. This confirmation from ATF should be retained with the registration document for the firearm.

**7.3.3.2 Reactivation of a registered unserviceable NFA firearm.** From time to time, a qualified manufacturer may receive a registered, unserviceable NFA firearm from a nonlicensee for reactivation. To lawfully do so, the firearm should be received pursuant to an approved ATF Form 5 for tax-exempt transfer (the transfer of a registered unserviceable firearm is not subject to the NFA transfer tax).<sup>118</sup> Upon reactivating the firearm, the manufacturer must file Form 2 with ATF to register the manufacture or reactivation. To return the firearm to its owner, the manufacturer must obtain an approved Form 4 from ATF to transfer the firearm.<sup>119</sup> Since the firearm is no longer unserviceable, the return of the firearm pursuant to an approved Form 4 would be subject to the \$200 NFA transfer tax, except that the

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<sup>115</sup> *ibid*

<sup>116</sup> 18 U.S.C. 922(k)

<sup>117</sup> See Instruction "c" on Form 2.

<sup>118</sup> 27 CFR 479.91

<sup>119</sup> 27 CFR 479.84

transfer tax for a firearm defined as “any other weapon” is \$5. In these instances, Forms 4 need not contain law enforcement certifications.

Manufacturers may also receive unserviceable NFA firearms from FFLs/SOTs for reactivation. Receipt of the firearms must be pursuant to approved Form 3. Upon reactivation, the manufacturer must file Form 2 to register the manufacture or reactivation. Approved Forms 3 must also be used to return reactivated firearms to the FFLs/SOTs.

## **Section 7.4 The identification of firearms.**

**7.4.1 Serial numbers.** Each manufacturer of a firearm must legibly identify it by engraving, stamping (impressing), or otherwise conspicuously placing on the firearm’s frame or receiver an individual serial number not duplicating any serial number placed by the manufacturer on any other firearm.<sup>120</sup> The requirement that the marking be “conspicuously” placed on the firearm means that the marking must be wholly unobstructed from plain view. For firearms manufactured on or after January 30, 2002, the serial number must be to a minimum depth of .003 inch and in a print size no smaller than 1/16 inch.

**7.4.1.1 What is an acceptable serial number?** Alpha characters (letters), for example a name, are not acceptable as a serial number. A proper serial number may contain such characters or letters, but it must have at least one numeric character (number). ATF takes the view that marking “legibly” means using exclusively Roman letters (A, B, C, and so forth) and Arabic numerals (1, 2, 3, and so forth).<sup>121</sup> Deviations from this requirement have been found to seriously impair ATF’s ability to trace firearms involved in crime.

**7.4.2 Additional information.** Certain additional information must also be conspicuously placed on the frame, receiver, or barrel of the firearm by engraving, casting, stamping (impressing), that is, they must be placed in such a manner that they are wholly unobstructed from plain view. For firearms manufactured on or after January 30, 2002, this information must be to a minimum depth of .003 inch. The additional information includes:

- (1) The model, if such designation has been made;
- (2) The caliber or gauge;
- (3) The manufacturer’s name (or recognized abbreviation); and
- (4) The city and State (or recognized abbreviation) where the manufacturer maintains its place of business.<sup>122</sup>

**7.4.3 Measuring the depth of markings.** The depth of all markings is measured from the flat surface of the metal and not the peaks or ridges. The height of serial numbers is measured as the distance between the latitudinal ends of the character impression bottoms (bases).

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<sup>120</sup> 27 CFR 479.102

<sup>121</sup> ATF Ruling 2002-6

<sup>122</sup> 27 CFR 479.102

**7.4.4 Obtaining variances to the marking requirements.** Requests for variances from the marking requirements should be submitted by letter to ATF’s Firearms Technology Branch (FTB) in duplicate. The requests should state the proposed variance and the reasons for the variance.

**7.4.4.1 Variances in the name and location of the manufacturer.** As stated above, the regulations require firearms to be marked with the manufacturer’s name, city, and State or a recognized abbreviation of the information. If other than complete names or recognized abbreviations are proposed to be used, a variance must be obtained from ATF.

**7.4.4.2 Variances for manufacturers’ contractors.** As pointed out in Section 7.2.2, some manufacturers contract with other entities to perform work on their firearms prior to their ultimate sale. In those instances, the contractors are also “manufacturers” required to place their own serial numbers and other required markings on the firearms. Obviously, the appearance of all the required markings on a firearm by multiple manufacturers, including multiple serial numbers, can lead to confusion and cause incorrect entries to be made in FFLs’ acquisition and disposition records. Recognizing that literal compliance with the marking requirements may be counter-productive, ATF is amenable to granting variances to such contractors. Thus, ATF has granted variances to contractors allowing them to only place markings on firearms that identify the contractor. Each contractor must request and obtain its own variance from FTB.

**7.4.4.3 Marking destructive devices.** In the case of a destructive device, ATF’s FTB may authorize alternate means of identification upon receipt of a manufacturer’s letter application, in duplicate. The application should show that engraving, casting, or stamping the weapons would be dangerous or impractical.<sup>123</sup> This variance would allow an alternate *method* of marking such devices. For example, ATF may permit the required markings to be placed on the device by paint or stencil. A variance in the *information required* to be placed on the device would not be granted. For example, lot numbers of ammunition classified as destructive devices would not be acceptable in lieu of the information required by the regulations.

**7.4.4.4 Marking parts, other than frames or receivers, defined as NFA firearms.** ATF’s FTB may authorize alternate means of identifying such parts upon receipt of the manufacturer’s letter application, in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of the regulations.<sup>124</sup> See Section 7.4.6 for information on marking silencer parts.

**7.4.5 Marking frames or receivers that are not complete weapons at the time of disposition.**

Firearms frames or receivers that are not components of complete firearms at the time of disposition must be identified with all the required markings, that is, serial numbers and all the additional markings discussed in Sections 7.4.1 and 7.4.2.<sup>125</sup>

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<sup>123</sup> *ibid*

<sup>124</sup> *ibid*

<sup>125</sup> *ibid*

**7.4.6 Marking silencer parts.** Some FFLs/SOTs assemble silencers, for subsequent sale, from parts acquired from their contractors (*NOTE*: this activity is the “manufacture” of NFA firearms requiring the assembler and the contractor to qualify as manufacturers under the GCA and the NFA). Under these circumstances, ATF takes the position that contractors are not required to place identifying markings on silencer parts. They may, however, place an assembler’s markings on these parts if the assembler so desires. It should also be noted that these contractors are not required to register the parts they produce by filing Forms 2, nor are they required to obtain approved Forms 3 to transfer the parts to assemblers.

**Section 7.5 Manufacturing machineguns.** Section 922(o), Title 18, U.S.C., makes it unlawful to possess or transfer a machinegun, except for transfers to or possession by Federal and State agencies or the transfer or possession of a machinegun lawfully possessed before the effective date of the statute, May 19, 1986. So, machineguns “lawfully possessed” before the effective date are those manufactured before May 19, 1986 and registered in the NFRTR. See also Section 7.6 on the manufacture of machineguns by contractors of FFLs/SOTs.

**7.5.1 Manufacture of machineguns for sale to government agencies or as “sales samples”.** Notwithstanding the prohibition in Section 922(o), qualified manufacturers may manufacture machineguns on or after May 19, 1986 for sale to Federal and State agencies or to FFLs/SOTs as “sales samples” for demonstration to prospective governmental customers.<sup>126</sup> The weapons may be manufactured and stockpiled in contemplation of future sales, but their registration and subsequent transfer are conditioned upon and restricted to sales only to government agencies or as sales samples. See Chapter 9 for a discussion of the required documentation supporting these sales. See also Section 7.6.1 on the manufacture of machineguns by contractors of FFLs/SOTs.

**7.5.2 Manufacture of machineguns for exportation.** Notwithstanding the prohibition in Section 922(o), qualified manufacturers may manufacture machineguns on or after May 19, 1986 for exportation in compliance with the Arms Export Control Act and Department of State regulations.<sup>127</sup> The weapons may be manufactured and stockpiled for future exportation.

**7.5.3 May machineguns be manufactured for distribution to U.S. Government contractors?** As interpreted by ATF, Section 922(o) contains no exception that would permit the lawful manufacture and stockpiling of machineguns for transfer to Government contractors. The only exceptions to the machinegun transfer and possession prohibitions in the statute are for machineguns manufactured for sale to Federal and State agencies, for distribution and use as sales samples, or for exportation.

**7.5.4 May machinegun receivers be manufactured and used as replacement parts for machineguns lawfully registered and possessed prior to May 19, 1986?** As previously stated, 18 U.S.C. 922(o) generally makes it unlawful to possess or transfer any machinegun, including a machinegun frame or receiver, manufactured after May 18, 1986. Exceptions are provided for weapons produced by a qualified manufacturer for sale to government entities, as dealer sales samples, or for exportation. There is no exception allowing for the lawful production, transfer, possession, or use of a post-May 18, 1986 machinegun receiver as a replacement receiver on a weapon produced prior to May 19, 1986.

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<sup>126</sup> 27 CFR 479.105(c)

<sup>127</sup> *ibid*

**Section 7.6 Manufacture of NFA firearms by contractors.** Qualified manufacturers of NFA firearms may contract with other persons to manufacture their NFA firearms. However, contractors who manufacture NFA firearms, or perform work on existing firearms as part of the manufacturing process, must also be qualified to manufacture NFA firearms. They are also subject to all NFA requirements imposed on NFA manufacturers relative to the manufacture, registration, transfer, and marking of NFA firearms. See Section 7.4 on the marking of firearms by manufacturers and variances that may be obtained from marking requirements.

**7.6.1 Contractors' manufacture of machineguns.** As previously stated, machineguns manufactured in the U.S. on or after May 19, 1986 must be solely for sale to U.S. or State governmental entities, for distribution as "sales samples," or for exportation (see Sections 7.5.1 and 7.5.2). However, a qualified NFA manufacturer may contract with other qualified firms to produce machineguns it intends to distribute only for those purposes. Since the number of machineguns that may be transferred between licensees is limited by 27 CFR 479.105, the parties involved will need to seek an alternate method or procedure under 479.26. For example, manufacturer B contracts with manufacturer A to build B's machinegun receivers and applies for and receives a variance that allows A to identify the receivers with B's identifying marks. A is to provide the receivers for assembly and distribution. However, since A is manufacturing the machineguns and must register them on a Form 2, the transfer is limited due to the provisions of 922(o) and 479.105. Both parties would need to apply for an alternate procedure or method that would allow A to transfer these machineguns to B.

**7.6.2 Manufacture of machineguns solely for purposes of testing.** The manufacture of machineguns solely for testing or research purposes is not recognized as a legitimate exception to the ban on possession or transfer of firearms under 18 U.S.C. 922(o). As previously stated, manufacturers may only manufacture machineguns on or after May 19, 1986 and stockpile the same if they are manufactured and held for sale to Federal or State agencies, for distribution as "sales samples," or for exportation.

**Section 7.7 Manufacturing NFA firearms exclusively for the United States.** A person or entity engaged in the business of manufacturing NFA firearms exclusively for the United States or any agency of the U.S. may be relieved from compliance with any provision of the NFA regulations, 27 CFR Part 479, with respect to such firearms.<sup>128</sup> This exemption may be obtained by filing with the NFA Branch a letter application setting out the manner in which the applicant conducts business, the type of firearm to be manufactured, and satisfactory proof of the existence of the manufacturer's Government contract under which the applicant intends to operate.<sup>129</sup> Approval of the application entitles the applicant to the exemption. The manufacture of weapons for the U.S. *and* other customers (for example, manufacture for exportation to overseas customers) would not qualify for the exemption. The exemption must be renewed with another approved letter application on or before July 1 of each year.<sup>130</sup>

**Section 7.8 Locations.** Your licensed premises is where your manufacturing must be done. ATF is often asked by a manufacturer whether he or she can conduct a manufacturing operation elsewhere, such as a nearby machine shop. While, in general, component parts can be made at a site other than the licensed premises, if the part being made is a receiver, silencer part, or a procedure is being performed (such as shortening of the barrel of a rifle or shotgun) where the complete firearm is there, the operation

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<sup>128</sup> 26 U.S.C. 5851(a)

<sup>129</sup> 27 CFR 479.33(b)

<sup>130</sup> 26 U.S.C. 5851(b)

must be done on the licensed manufacturing premises. If components are modified or fabricated at a location where all other parts for a complete firearm are present, the location must be licensed as a manufacturer.